

EXHIBIT 1

APR 15 2011

SUM-100

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

FORD MOTOR COMPANY

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

GENE EDWARDS, on behalf of herself and all others similarly situated

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Superior Court of San Diego

Central Courthouse
220 West Broadway, San Diego, California 92101

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Eric H. Gibbs, 601 California Street, 14th Floor, San Francisco, California 94108 Telephone: (415) 981-4800

CASE NUMBER:
(Número del Caso):

37-2011-00089707-CU-BT-CTL

DATE: April 15, 2011
(Fecha)

APR 15 2011

Clerk, by
(Secretario)

A. GUTIERREZ

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

OFFICE OF THE
GENERAL COUNSEL
11 APR 18 PM 4:25
PRACTICE GROUP LITIGATION

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric H. Gibbs (State Bar No. 178658) Girard Gibbs LLP 601 California Street, 14th Floor San Francisco, California 94108 TELEPHONE NO.: (415) 981-4800 FAX NO.: (415) 981-4846 ATTORNEY FOR (Name): Plaintiff Gene Edwards		FOR COURT USE ONLY APR 15 2 15 PM '11 2011
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 West Broadway MAILING ADDRESS: 220 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central Courthouse		
CASE NAME: Gene Edwards v. Ford Motor Company		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		CASE NUMBER: 37-2011-00089707-CU-BT-CTL JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (36) Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 2

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: April 15, 2011
 Eric H. Gibbs

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

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19 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SAN DIEGO**

21 GENE EDWARDS, on behalf of herself and all
22 others similarly situated,

23 Plaintiff,

24 vs.

25 FORD MOTOR COMPANY,

26 Defendant.

Case No. 37-2011-00089707-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

- 1) Violation of Consumers Legal Remedies Act, Civ. Code § 1750 *et seq.*
- 2) Violation of Unfair Competition Law, Bus. & Prof. Code § 17200 *et seq.*

27 **CLASS ACTION COMPLAINT**

1 **NATURE OF THE CASE**

2 1. Plaintiff Gene Edwards owns a 2006 Ford Freestyle vehicle that has repeatedly surged
3 forward and stalled while her foot was on the brake and she was bringing the vehicle to a stop. Fearing
4 that her surging vehicle would injure someone, Ms. Edwards took her Freestyle to a Ford dealership
5 which replaced the vehicle's electronic throttle body under warranty. About two years later, the surging
6 returned and the electronic throttle body was again replaced, this time at a charge of over \$900.

7 2. Plaintiff has since learned that the problems she experienced with her vehicle are
8 widespread and the result of a safety defect in 2005-2007 Ford Freestyle vehicles that was known by
9 Ford but not disclosed to its customers. Over 500 Freestyle owners have specifically sought out the
10 National Highway Traffic Safety Administration (NHTSA) and lodged complaints—an unusually high
11 number of government complaints for any automotive safety issue. The complaints reflect Freestyle
12 owners' concerns for their safety, with several reporting accidents and near-accidents, as well as the
13 inefficacy of repairs completed at Ford dealerships.

14 3. Defendant Ford Motor Company has known about the safety defect in its Freestyle
15 vehicles since at least 2005, when the company issued internal service bulletins referencing the
16 symptoms and instructing its dealerships to respond by replacing the electronic throttle body. But Ford
17 nonetheless continued selling and servicing 2005-2007 Freestyle vehicles without ever informing its
18 customers of the recurring defect or its attendant safety risks.

19 4. Plaintiff thus brings this lawsuit under California's Consumers Legal Remedies Act and
20 Unfair Competition Law to require Ford to notify its customers and prospective customers of the defect
21 and to reimburse Freestyle owners for the costs of their repairs.

22 **PARTIES**

23 5. Plaintiff Gene Edwards is a citizen and resident of Escondido, California.

24 6. Defendant Ford Motor Company is a Delaware corporation with its principal place of
25 business in Dearborn, Michigan. Ford manufactures, distributes for sale, and warrants the vehicles at
26 issue in this Complaint.

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7. This Court has jurisdiction over this action under Code of Civil Procedure section 410.10

8. Venue is proper in this Court under Code of Civil Procedure section 395(b) because this

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9. Starting with the 2005 model year, Ford began manufacturing, marketing, and selling the

12

10. The 2005-2007 Ford Freestyle vehicles suffer from a defect that causes uncontrolled

11. Surging can occur whenever the vehicle's engine is turned on, including at low speeds,

12. Numerous Freestyle owners have described their surging and stalling problems to

- 2005 Ford Freestyle lunges forward when placed in gear and sometimes when sitting at a stop sign or traffic light. Also lunges backward when in reverse.
- My 2005 Ford Freestyle will accelerate without any driver action and will die after accelerating. This occurs several times per month.

- 2005 Ford Freestyle SE, self accelerating and lunges forward on its own (when foot is on brake) and displays "fail safe mode on dash", vehicle shuts down-mostly when going in reverse. Just bought vehicle from dealership approx 3 weeks ago.
- The contact owns a 2007 ford Freestyle. While stopped at a stop light or stop sign with the brake pedal depressed, the vehicle revs and jerks forward. In addition, when the vehicle is placed into reverse and the brake pedal is depressed, the vehicle revs and jerks backwards. The current mileage is 26,099 and failure mileage is 22,000.

The Defect Poses An Unreasonable Safety Risk

13. The defect in 2005-2007 Freestyle vehicles poses an unreasonable safety risk for class members as well as the drivers, passengers, and pedestrians who share the road. The surging and stalling that result from the defect greatly increase the risk of collision and impede the driver's ability to safely maneuver the vehicle.

14. Freestyle drivers have reported hitting other vehicles, walls, fences and poles when their vehicles uncontrollably surged:

- I have a 2006 Freestyle that lunges when you put it in gear. Hit a car backing up in a parking lot. Can't afford to have it repaired I'm unemployed.
- The contact owns a 2006 Ford Freestyle. The contact stated that while driving, the vehicle suddenly accelerated and crashed into a wall.
- I currently own a 2005 Ford Freestyle and numerous times it has lunged when I was in a stopping position in many occasions. When I am in the car and in drive with the brakes on the car will instantly rev up and move forward. One occasion I was at a drive thru and the vehicle actually hit a pole in the drive thru. Another time, my wife was walking around the front of the car and the car lunged forward and hit my wife. This is a very dangerous problem.
- The contact owns a 2005 Ford Freestyle. The contact stated while reversing from a residential driveway at a relatively low speed, the vehicle abnormally accelerated and crashed into a fence post.
- The contact owns a 2007 Ford Freestyle. The contact stated while entering a residential garage at 2 mph, the vehicle abnormally accelerated and she crashed into the rear wall of the garage of the residence. There was substantial damage done to the interior of the home and the contact barely missed hitting the retaining wall. The dealer inspected the vehicle and stated that the throttle body was causing the failure.

15. Other drivers have reported near-misses when their surging Freestyle vehicles almost collided with children, pedestrians and other vehicles:

- I own a 2005 Ford Freestyle AWD with a 3.0l v6. I have had to park my vehicle as it has become unsafe for my family to use. While driving at slow speeds the vehicle will abruptly surge in drive or reverse. Now when this happens the vehicle dies where ever it occurs. I have kept the vehicle from hitting other cars multiple times and yesterday was the final straw. I almost hit a kid at my child's school. Waiting in line to pick up my children from school the car surged so bad that the breaks would not stop it. I had to throw it into park.
- My 2005 Ford Freestyle with 45,000 miles kept surging forward. It happened twice in 2 months when I was alone. This past July I picked my grandchildren up at camp sure enough it did it again almost striking a child in the parking lot.
- 06/05/08 during idle vehicle lunges forward, must exert extreme pressure on brake to prevent accident. Wrench light will illuminate on the instrument panel and fail safe engine mode will be displayed. Vehicle will then fail to accelerate when throttle applied but then lunges forward again when throttle released. Very dangerous-almost struck pedestrian! This has occurred several times but vehicle will reset after engine is turned off and restarted. . . . Occurred again on 8/3/08 Taken to dealership-diagnostic test show it to be throttle body problem.
- Our 2007 Ford Freestyle accelerates suddenly; this behavior is worse when the a/c is on and the car is in reverse. The feeling is of flooring the accelerator; if it had not been for me already having my foot on the brake, I would have had a collision with the car behind me.

16. Many other Freestyle drivers expressed concerns about the safety of passengers, pedestrians and other drivers sharing the road:

- I have a 2006 Ford Freestyle the throttle body has gone bad and it cause the car to lunge out of control. This could be a problem as it lunges about a foot or two and you could easily hit a person or car or some other object.
- Surging /lunging of car even while pressing brakes as hard as possible. Occurs quite frequently. Have not repaired yet, will not let wife or daughter drive until I get it fixed.
- 2007 Ford Freestyle surges even when pushing the brake. Mainly does it when backing up but has done it on other occasions. Took to Ford dealer told throttle body is bad. After searching online I find that this is a common problem. This is dangerous because the car accelerates and surges forward or backward without warning when this happens. Was told it would cost over \$600 to replace part. I have two young children and feel unsafe driving this car and feel others who own the car should be made aware of this problem.

17. To date, over 500 Ford Freestyle owners and lessees have taken the time to seek out NHTSA and lodge a complaint. This is an unusually high number for any automobile safety issue and reflects the severity of the safety risk.

1 **Ford Has Failed To Disclose Or Correct The Defect**

2 18. The surging and stalling problems in Freestyle vehicles are a result of a defective
3 electronic throttle control (ETC), that Ford installed in its 2005-2007 Freestyle, consisting of an
4 electronic throttle body, powertrain control module (PCM), the gas pedal assembly, sensors, and
5 associated wiring.

6 19. In other words, whereas a traditional accelerator system directly connects the gas pedal to
7 the throttle through cables, Ford's ETC system uses computers, sensors, and electronic wiring to control
8 acceleration. Ford recognized that safety is a major concern with ETC systems (as they make
9 acceleration dependent on complex electronics rather than simple mechanics), but nonetheless
10 introduced it into the Freestyle to improve the vehicle's fuel economy, and thus its market position.

11 20. Ford has known that the Freestyle's ETC system was defective since at least 2005. As
12 early as April 2005, Ford was issuing Technical Service Bulletins (TSBs) to its dealer service
13 departments referencing acceleration problems in Freestyle vehicles, and by December 2005, Ford was
14 directing the service departments to reprogram the PCM and replace the electronic throttle body in
15 Freestyle vehicles—a repair that may temporarily stop the surging and stalling but, because it does not
16 correct the underlying defect, exposes Freestyle owners to the same safety risks in the future.

17 21. Ford also had knowledge of the defect through standard pre-release testing, which
18 because surging and stalling occurs relatively early in the vehicles' life, would have revealed the defect.
19 In addition, Ford had access to aggregate warranty repair data, customer complaint data, and
20 replacement part sales data revealing that surging and stalling in Freestyle vehicles is a serious and
21 widespread problem.

22 22. Despite its knowledge of the widespread ETC defect in its Freestyle vehicles, Ford
23 continued to sell and service 2005-2007 Freestyle vehicles and did so without informing its customers
24 and prospective customers of the defect and its attendant safety risks. Ford also continues to replace
25 defective ETC parts with equally defective parts that may temporarily alleviate the surging and stalling
26 but do not correct the underlying defect and continue to expose Freestyle customers to the same
27 unreasonable safety risk. Ford often charges Freestyle owners over \$500 for these inadequate ETC
28 repairs and does not inform Freestyle owners that the surging and stalling is a widespread problem that,

1 because of the uncorrected underlying defect in the ETC, may return in the future.

2 **PLAINTIFF'S EXPERIENCE**

3 **Plaintiff Gene Edwards**

4 23. Plaintiff Gene Edwards purchased a used 2006 Ford Freestyle from the Bob Baker Ford
5 dealership in San Diego, California in October 2006.

6 24. In June 2008, Ms. Edwards's Freestyle began to surge as far as two or three feet while
7 driven at low speeds and also while at a complete stop, revving loudly and subsequently stalling.

8 25. Concerned, Ms. Edwards took her Freestyle to Perry Ford in Poway, California. The
9 Ford dealership told Ms. Edwards that the problem was uncommon and did not mention any service
10 bulletins before reprogramming her Freestyle's PCM and replacing the throttle body under warranty.

11 26. Despite the PCM reprogramming and throttle body replacement, Ms. Edwards's Freestyle
12 began surging again in July 2010. As her car was no longer under warranty, Ms. Edwards paid over
13 \$900 to replace the throttle.

14 27. Ms. Edwards is concerned that someone could have been hurt when her car surged and
15 could still be hurt in the future, and would not have bought her Ford Freestyle had she known the vehicle
16 presented such a significant safety risk.

17 **CLASS ACTION ALLEGATIONS**

18 28. Plaintiff brings this action on behalf of herself and a class of persons initially defined as
19 follows:

20 All persons in California who own or lease a 2005-2007 Ford Freestyle, and all persons
21 in California who previously owned or leased a 2005-2007 Ford Freestyle and paid for
22 repairs to the vehicle's Electronic Throttle Control.

23 Excluded from the Class are Ford; any affiliate, parent, or subsidiary of Ford; any entity in which Ford
24 has a controlling interest; any officer, director, or employee of Ford; any successor or assign of Ford;
25 anyone employed by counsel for Plaintiff in this action; and any Judge to whom this case is assigned as
26 well as his or her immediate family.

27 29. Numerosity. Ford sold over 150,000 class vehicles, including a substantial portion in
28 California. Members of the class thus number in the thousands and are too numerous to practically join

1 in a single action.

2 30. Commonality. Common questions of law and fact exist as to all members of the class
3 and predominate over questions affecting only individual class members. These common questions
4 include the following:

- 5 a. whether class vehicles suffer from a defect that causes surging and stalling;
- 6 b. whether the defect constitutes an unreasonable safety risk;
- 7 c. whether Ford knows about the defect and, if so, how long Ford has known of the
8 defect;
- 9 d. whether the existence of the defect would be considered a material fact by a
10 reasonable consumer;
- 11 e. whether Ford was or is legally obligated to disclose the defect to Plaintiff and
12 Class members;
- 13 f. whether Ford's failure to disclose the defect violates California's Consumers
14 Legal Remedies Act or Unfair Competition Law; and
- 15 g. whether Plaintiff and the other class members are entitled to be notified of the
16 defect and/or receive reimbursement for ETC repairs;

17 31. Typicality. Plaintiff's claims are typical of the claims of the class, because, among other
18 things, Plaintiff purchased a class vehicle which contains the same defect found in all other class
19 vehicles.

20 32. Adequacy. Plaintiff is an adequate representative because her interests align with those
21 of the class members she seeks to represent. Plaintiff has retained counsel competent and experienced in
22 complex class action litigation and intends to prosecute this action vigorously on behalf of the class.

23 33. Superiority. The class action is superior to other available means for the fair and efficient
24 adjudication of this dispute. The injury suffered by each class member, while meaningful on an
25 individual basis, is not of such magnitude as to make the prosecution of individual actions against Ford
26 economically feasible. In addition, individualized litigation presents a potential for inconsistent or
27 contradictory judgments and increases the delay and expense to all parties and the court system. By
28 contrast, the class action device presents far fewer management difficulties and provides the benefits of

1 single adjudication, economy of scale, and comprehensive supervision by a single court. Furthermore,
2 Ford has acted or refused to act on grounds generally applicable to the class, thereby making appropriate
3 final and injunctive relief with respect to the members of the class as a whole.

4 **FIRST CAUSE OF ACTION**
5 **(Violation of the Consumers Legal Remedies Act,**
6 **Cal. Civ. Code §§ 1750 *et seq.*)**

7 34. Plaintiff, on behalf of herself and all others similarly situated, realleges as if fully set
8 forth, each and every allegation set forth herein.

9 35. Ford has violated the Consumers Legal Remedies Act (CLRA), California Civil Code
10 section 1770(a)(5) and (7) by engaging in unfair methods of competition and unfair and deceptive acts
11 and practices in connection with transactions—namely, the sale of Ford Freestyle vehicles and
12 subsequent repairs—that are intended to result and have resulted in the sale and lease of goods and
13 services to consumers.

14 36. In connection with the sale of Freestyle vehicles to Plaintiff and class members and
15 repairs paid for by Plaintiff and class members, Ford omitted material information about a known safety
16 defect that it was legally obligated to disclose. Ford did not inform and has never informed Plaintiff or
17 class members that Ford Freestyle vehicles suffer from a defect that causes uncontrolled surging and
18 stalling. Ford has also failed to disclose that ETC repairs do not correct the defect and likewise result in
19 an unreasonable safety risk.

20 37. The defect in Ford Freestyle vehicles poses an unreasonable safety risk to consumers and
21 other members of the public with whom they share the road. Ford had exclusive knowledge of the
22 defect and has actively concealed it from consumers.

23 38. The existence of the defect in Freestyle vehicles is a fact that a reasonable consumer
24 deciding whether to purchase a vehicle would consider material. The existence of the defect in the
25 replacement parts provided by Ford is likewise a fact that a reasonable consumer deciding how to deal
26 with a malfunctioning vehicle would consider material.

27 39. Had Ford adequately disclosed material information about the defect and its attendant
28 safety risks, Plaintiff and class members would not have purchased class vehicles and would not have
paid for inadequate ETC repairs.

1 40. On March 1, 2011, Plaintiff Edwards notified Ford in writing that it is in violation of the
2 CLRA and demanded that Ford remedy the violations. Ford has not responded to Plaintiff's notice and
3 demand.

4 41. Pursuant to the provisions of California Civil Code § 1780, Plaintiff seeks an order
5 requiring Ford to inform class members of the defect and unreasonable safety risk in 2005-2007
6 Freestyle vehicles; a declaration that Ford's conduct violates the Consumers Legal Remedies Act; an
7 award of damages; and attorneys' fees and costs of litigation.

8 **SECOND CAUSE OF ACTION**
9 **(Violation of the Unfair Competition Law,**
 Bus. & Prof. Code section 17200 *et seq.*)

10 42. Plaintiff, on behalf of herself and all others similarly situated, realleges as if fully set
11 forth, each and every allegation set forth herein.

12 43. Ford has violated and continues to violate the Unfair Competition Law, Cal. Bus. & Prof.
13 Code § 17200, *et seq.*, which prohibits unlawful, unfair, or fraudulent acts or practices.

14 44. Ford's acts and practices, as alleged in this complaint, constitute unlawful practices in
15 that they violate the Consumers Legal Remedies Act.

16 45. Ford's acts and practices, as alleged in this complaint, constitute fraudulent practices in
17 that they are likely to deceive a reasonable consumer. A reasonable consumer expects or assumes that
18 automobiles sold by Ford do not suffer from known safety issues and would be deceived by Ford's
19 failure to disclose that 2005-2007 Freestyle vehicles suffer from a defect that causes uncontrolled
20 surging and stalling. A reasonable consumer also expects or assumes that Ford's prescribed repair
21 procedures correct the underlying problem and would be deceived by Ford's practice of prescribing
22 repair procedures that do not correct the Freestyle's ETC defect and expose them to further uncontrolled
23 surging and stalling in the future.

24 46. Ford's acts and practices, as alleged in this complaint, constitute unfair practices in that
25 (i) they are unethical, unscrupulous, and substantially injurious to consumers; (ii) any legitimate utility
26 of Ford's conduct is outweighed by the harm to consumers; (iii) the injury is not one that consumers
27 reasonably could have avoided; and/or (iv) the conduct runs afoul of the public safety policy embodied
28 in the Highway Safety Act and the policies underlying the CLRA, which seeks to protect consumers

1 against unfair and sharp business practices and to promote a basic level of honesty and reliability in the
2 marketplace. It is fundamentally unfair for Ford to sell vehicles with known safety defects, for Ford not
3 to notify consumers of the safety defects, and for Ford to prescribe repair procedures that do not
4 permanently correct the safety defect, exposing consumers to the same unreasonable safety risks in the
5 future.

6 47. As a result of Ford's unlawful, unfair, and fraudulent business practices as alleged herein,
7 Plaintiff has suffered injury in fact and lost money or property, in that she purchased a class vehicle she
8 otherwise would not have, paid for inadequate repairs, and is left with a vehicle of diminished value and
9 utility because of the safety defect.

10 48. Plaintiff and class members are entitled to equitable relief, including restitution of all
11 revenue accruing to Ford because of its unlawful, unfair and fraudulent practices; attorneys' fees and
12 costs; declaratory relief; and a permanent injunction enjoining Ford from its unlawful, unfair, and
13 fraudulent activity

14 **PRAYER**

15 WHEREFORE, Plaintiff, on her own behalf and on behalf of the class, prays for judgment as
16 follows:

- 17 a. For an order certifying the proposed class and appointing Plaintiff and her counsel to
18 represent the class;
- 19 b. For an order requiring Ford to disclose the defect and associated safety risks in 2005-
20 2007 Freestyle vehicles to all existing and prospective Freestyle owners and lessees;
- 21 c. For an award of appropriate damages or restitution to Plaintiff and class members;
- 22 d. For an order enjoining Ford from continuing to engage in unlawful business practices, as
23 alleged herein;
- 24 e. For an order awarding Plaintiff and the members of the class pre-judgment and post-
25 judgment interest;
- 26 f. For an order awarding Plaintiff and the members of the class reasonable attorneys' fees
27 and costs of suit, including expert witness fees; and
- 28 g. For such other and further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 15, 2011

Respectfully Submitted

GIRARD GIBBS LLP

By: 
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David Stein
Amy M. Zeman
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16 Attorneys for Plaintiff

17
18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF SAN DIEGO**

20 GENE EDWARDS, on behalf of herself and all
21 others similarly situated,

22 Plaintiff,

23 vs.

24 FORD MOTOR COMPANY,

25 Defendant.

Case No. **37-2011-00089707-CU-BT-CTL**

**DECLARATION OF PLAINTIFF'S
COUNSEL PURSUANT TO CALIFORNIA
CIVIL CODE SECTION 1780(d)**

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27
28
DEC. OF PLAINTIFF'S COUNSEL PURSUANT TO CALIFORNIA CIVIL CODE SECTION 1780(d)

1 I, Eric H. Gibbs, declare as follows:

2 1. I am a partner with Girard Gibbs LLP, counsel for Plaintiff in this action. I have personal
3 knowledge of the facts stated herein and, if called upon to do so, could and would testify competently
4 thereto.

5 2. I submit this declaration on behalf of Plaintiff and in support of Plaintiff's Class Action
6 Complaint, which is based in part on violations of the Consumers Legal Remedies Act, California Civil
7 Code §§ 1750 *et seq.*

8 3. Plaintiff filed the Class Action Complaint in the County of San Diego Superior Court of
9 California. San Diego County is the appropriate location for this litigation because Defendant Ford
10 Motor Company does business in, and the transactions alleged in the Complaint occurred in, San Diego
11 County.

12 I declare under penalty of perjury that the foregoing is true and correct. Executed on April 15,
13 2011, at San Francisco, California.

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17 Eric H. Gibbs
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FILED
CIVIL BUSINESS UNIT
JULY 17 2011

2011 MAY 12 PM 2:46

JULY 17 2011
SAN DIEGO COUNTY, CA

1 AMIR NASSIHI (SBN 235936)
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8 Attorneys for Defendant
9 FORD MOTOR COMPANY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

VIA FAX

11 GENE EDWARDS, on behalf of herself and all
12 others similarly situated,

Plaintiff,

vs.

FORD MOTOR COMPANY,

Defendant.

Case No. 37-2011-00089707-CU-BT-CTL

**DEFENDANT FORD MOTOR COMPANY'S
ANSWER TO COMPLAINT.**

18 Under the provisions of Section 431.30 of the Code of Civil Procedure, Defendant Ford
19 Motor Company denies all of the allegations in the Complaint, and each cause of action, and further
20 denies that Plaintiff sustained damages alleged, or at all.

FIRST AFFIRMATIVE DEFENSE

22 1. Plaintiff's Complaint fails to state a claim against Ford upon which relief can be
23 granted.

SECOND AFFIRMATIVE DEFENSE

25 2. Plaintiff's claims are barred by the applicable statutes of limitations and repose.

THIRD AFFIRMATIVE DEFENSE

27 3. The negligence, fault, or carelessness of Plaintiff and the putative class members was
28 the sole, intervening, or superseding cause of their alleged damages and therefore, any recovery by

1 Plaintiff or the putative class members is barred or diminished pursuant to the applicable laws;
2 including but not limited to, more specifically, (1) the failure to use the product as reasonably
3 anticipated by the manufacturer, and (2) the use of the product for a purpose not intended by the
4 manufacturer.

5 **FOURTH AFFIRMATIVE DEFENSE**

6 4. The negligence, fault, or carelessness of other persons or entities caused or
7 contributed to Plaintiff's alleged damages and therefore, any recovery by Plaintiff is barred or
8 diminished in proportion to the amount of negligence, fault, or carelessness attributable to such
9 persons or entities.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 5. Plaintiff and putative class members' claims are barred, in whole or in part, by
12 settlement or accord and satisfaction of their claims.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 6. Plaintiff's claims for equitable relief are barred due to the existence of adequate
15 remedy at law.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 7. Plaintiff's class action allegations are barred in that if this action is certified as a class
18 action, Ford's rights under the Fifth and Seventh Amendments to the United States Constitution
19 would be violated.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 8. The subject vehicles, as described in Plaintiff's complaint, were not in the same
22 condition at the time of the event(s) and/or damages alleged in Plaintiff's Complaint as when they
23 left the alleged custody of Ford and therefore, any recovery by Plaintiff is barred.

24 **NINTH AFFIRMATIVE DEFENSE**

25 9. Any allegedly defective condition in the subject vehicles described in Plaintiff's
26 Complaint developed as a result of any unforeseeable misuse, abuse, abnormal use, alterations,
27 changes, modifications, or improper maintenance or repairs made to the vehicle after it left the
28

1 alleged possession and control of the manufacturer, by persons or entities over which Ford has no
2 control, and therefore, any recovery by Plaintiff is barred.

3 **TENTH AFFIRMATIVE DEFENSE**

4 10. All acts of Ford at the time of manufacture, sale, or distribution of the subject
5 vehicles as described in Plaintiff's Complaint, were in conformity with the state-of-the-art and were
6 based upon the state of knowledge existing at the relevant time alleged in the complaint, and
7 therefore, any recovery by Plaintiff is barred pursuant to the applicable statutes.

8 **ELEVENTH AFFIRMATIVE DEFENSE**

9 11. Ford is entitled to a set-off of monies previously awarded or collected by Plaintiff or
10 the putative class members for the alleged damages to their vehicles.

11 **TWELFTH AFFIRMATIVE DEFENSE**

12 12. Plaintiff's claims are barred because at the time the products at issue in this litigation
13 left Ford's control, they complied with applicable codes, standards, regulations, and specifications
14 established, adopted, promulgated, or approved by the United States or by California law, or by any
15 agency of the United States or California and industry standards. The products were reasonably fit,
16 suitable, and safe for their intended purpose.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 13. If Plaintiff and/or the putative class members sustained damages as alleged in
19 Plaintiff's complaint, which Ford specifically denies, the acts, omissions, negligence, fault,
20 carelessness, assumption of risk, or other conduct of plaintiffs, class members, or others not named
21 as parties for whose actions Ford is neither liable nor responsible, either precludes or diminishes any
22 recovery.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 14. Plaintiff and/or the putative class members failed to notify Ford of any alleged breach
25 of warranty within a reasonable time as required by the Uniform Commercial Code and, therefore,
26 any recovery by plaintiff against Ford under a theory of warranty is barred.

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1 **FIFTEENTH AFFIRMATIVE DEFENSE**

2 15. Plaintiff's and/or the putative class members' claims are barred under the equitable
3 doctrines of estoppel, laches, unclean hands, and/or waiver.

4 **SIXTEENTH AFFIRMATIVE DEFENSE**

5 16. Plaintiff's and/or the putative class members' claims are barred, in whole or in part,
6 by the terms of any applicable express limited warranty.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 17. Plaintiff's and/or the putative class members' claims are barred because the alleged
9 damages sustained were not proximately caused by any act or omission by Ford.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 18. Plaintiff's and/or the putative class members' claims are barred by reason of
12 Plaintiff's failure to mitigate the alleged damages or losses.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 19. Plaintiff's and/or the putative class members' claims are barred, in whole or in part,
15 because Ford's advertisements with respect to the subject vehicles were not false, misleading, or
16 deceptive, and, therefore, constitute protected commercial speech under the applicable provisions of
17 the United States Constitution.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 20. To the extent applicable, Plaintiff's breach of warranty claims are barred by a lack of
20 privity between plaintiff and Ford and because Plaintiff and the putative class members failed to
21 provide Ford with reasonable or adequate notice of the alleged breach of any such purported
22 warranties.

23 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

24 21. Plaintiff's and/or the putative class members' claims may be barred in whole or in
25 part by the operation of the Economic Loss Doctrine.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 22. Plaintiff's complaint is defective for failure to join indispensable parties.
28

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 23. If Plaintiff's and/or the putative class members' vehicle was damaged, those damages
3 occurred because it was used for a purpose other than that for which it was intended, in a manner
4 other than that in which it was intended to be used, and in disregard of instructions and directions
5 regarding its use. Such misuse was not reasonably foreseeable to Ford.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 24. Notwithstanding the claims and contentions of Plaintiff, Plaintiff received all or
8 substantially all of the benefit from the subject products that plaintiff hoped and intended to receive,
9 and, to that extent, any damages and/or restitution that plaintiff might be entitled to recover from
10 Ford must be correspondingly reduced.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 25. The "unfairness" prong of the Unfair Competition Law is so unclear, vague,
13 indefinite, and uncertain that it violates the Due Process Clause of the Fourteenth Amendment of the
14 United States Constitution and the Due Process Clause of the California Constitution (art. I, § 7).

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 26. To the extent Plaintiff asserts claims under the Unfair Competition Law (Bus. & Prof.
17 Code, § 17200 et seq.) based upon theories of common law tort, strict liability, or breach of
18 warranty, such claims are barred. (*Klein v. Earth Elements, Inc.*, 59 Cal. App. 4th 965 (1997).)

19 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

20 27. The activities of Ford alleged in Plaintiff's Complaint are protected commercial
21 speech under the United States and California Constitutions.

22 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

23 28. Plaintiff has failed to plead her claims with sufficient particularity.

24 **TWENTY- NINTH AFFIRMATIVE DEFENSE**

25 29. Plaintiff and/or the putative class members lack standing to assert the claims alleged
26 in the Complaint.

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1 **THIRTY- FIVE AFFIRMATIVE DEFENSE**

2 35. Plaintiff's claims are barred, in whole or in part, by the Commerce Clause of the
3 United States Constitution because they purport to regulate interstate commerce and impermissibly
4 place an undue burden on interstate commerce.

5 **THIRTY- SIX AFFIRMATIVE DEFENSE**

6 36. Plaintiff's vehicles complied with all applicable governmental regulations and
7 industry standard and was consistent with the state of the art at the time of sale.

8 **THIRTY - SEVEN AFFIRMATIVE DEFENSE**

9 37. Some or all of Plaintiff's claims are impliedly preempted by the Motor Vehicle Safety
10 Act, 48 U.S.C. § 30301, et seq., or by other federal statutes or regulations.

11 **THIRTY - EIGHT AFFIRMATIVE DEFENSE**

12 38. Ford intends to rely upon, reserves its right to assert, and hereby pleads such other
13 and related defenses as may becomes available in the event of a determination that this action, or
14 some part thereof, is governed by the substantive law of a state other than California.

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1 **THIRTY - NINETH AFFIRMATIVE DEFENSE**

2 39. Ford gives notice that it intends to rely on other defenses that become available
3 during discovery in this case and reserves the right to amend its answer to assert any such defense.

4 Wherefore, Defendant prays as follows:

- 5 1. that Plaintiff take nothing by way of her Complaint;
6 2. that Defendant be awarded costs of suit;
7 3. that Defendant be awarded reasonable attorneys' fees; and
8 4. for such other and further relief as the Court deems just and proper.

9
10 Date: May 12, 2011

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

11
12 By: 

13 AMIR NASSIHI
14 NAOKI KANEKO

15 Attorneys for Defendant
16 FORD MOTOR COMPANY
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The undersigned declare: I am over the age of 18 years and not a party to the within action. I am employed in the county where this service occurs. My business address is One Montgomery, Suite 2700, San Francisco, California 94104, my facsimile number is (415) 391-0281. On the date shown below I served the following document(s):

on the interested parties named herein and in the manner indicated below:

Eric H. Gibbs, Esq.
Girard Gibbs LLP
601 California Street, 14th Floor
San Francisco, CA 94104
Tel: (415)981-4800
Fax: (415)981-4846
ATTORNEYS FOR PLAINTIFF

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555 Montgomery St., Suite 820
San Francisco, CA 94111
Tel: (415)433-4949
Fax: (415)433-7311
ATTORNEYS FOR PLAINTIFF

X **FIRST CLASS U.S. MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons listed above by placing the envelope(s) for collection and mailing following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 12, 2011, at San Francisco, California.

Shaun Teater

Sharon Teater